

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

AR 600

In the Matter of Rulemaking Regarding  
Allowances for Diverse Ownership of  
Renewable Energy Resources

REPLY COMMENTS OF  
RENEWABLE NORTHWEST

**I. INTRODUCTION**

Renewable Northwest submits these Reply Comments addressing some the February 14, 2018 Opening Comments that some of the stakeholders filed in response to Chief Administrative Law Judge (“ALJ”) Michael Grant’s January 25, 2018 Notice. We look forward to further discussion on these issues at the March 6, 2018 Commission Workshop.

**II. RESPONSES TO PARTIES’ OPENING COMMENTS**

***1. A Second Track Request for Proposal (“RFP”) Process for RFPs that Do Not Incorporate or Consider Utility Ownership of Resources.***

As noted in our Opening Comments, we see merit in a second track RFP process with exemptions from some of the competitive bidding requirements when utility ownership of resources is not a factor in an RFP.

**A. Clarity on What the Two Tracks Generally Entail is Important**

If the Commission decides to adopt rules with a two-track RFP process, we encourage the Commission to outline the potential requirements for each track. In its opening comments, the Industrial Customers of Northwest Utilities (“ICNU”) recommends that “on a case-by-case basis,

the Commission consider whether strict compliance with a section’s requirement is necessary to ensure a fair process. . . .”<sup>1</sup> Like ICNU, we see value in a two-track RFP process.<sup>2</sup> However, we recommend that the final rules identify which requirements could be subject to waiver under a second track. For example, the Proposed Rules allow the Commission to determine, on a case-by-case basis, that an Independent Evaluator (“IE”) is not necessary if a given RFP does not include or consider utility resource ownership. This Proposed Rule provides a clear expectation that one process track would involve an IE and another track may not.

Our intent with this recommendation is to underline the importance of rules that set expectations for utilities and bidders as to which set of requirements would apply to one particular track versus another.<sup>3</sup> Uncertainty regarding which requirements could be waived under a second track could lead to costly and unnecessary additional process and create confusion among utilities, prospective bidders, and other interested stakeholders.

B. A two-track approach would likely provide valuable flexibility

Like Commission Staff, we see merit in a two-track RFP process because it would provide utilities with flexibility and optionality.<sup>4</sup> The Joint Utilities argue that dispensing with the requirement to involve an IE for RFPs that do not consider utility ownership of resources would reduce competition by incentivizing utilities to pursue RFPs without an ownership option.<sup>5</sup> We do not share the Joint Utilities’ concern.

Our review of the Proposed Rules indicates that utilities would retain the discretion to choose which type of RFP—with or without an ownership option—to issue. As a result, we view

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<sup>1</sup> ICNU Opening Comments at 3.

<sup>2</sup> *Id.* at at 1-2.

<sup>3</sup> We also recognize that the Commission or an ALJ would nonetheless retain the ability to modify or waive a rule for limited purposes in a particular proceeding. See OAR 860-001-0000(2).

<sup>4</sup> Staff Opening Comments at 3.

<sup>5</sup> Joint Utilities’ Opening Comments at 6.

the adoption of a second track for RFPs without utility ownership options as a measure that could decrease process and costs when the utility, exercising its discretion, decides to issue an RFP without utility ownership options.

## ***2. Structure of IE Requirement***

We favor the approach in the Proposed Rules giving the Commission discretion to determine that an IE is not necessary when a particular RFP does not contemplate utility ownership. This approach would give the Commission a mechanism to address a situation in which the additional regulatory steps and associated costs outweigh the benefits of IE involvement with a given RFP. This approach would also give stakeholders a sense of two clearly delineated potential tracks for an RFP, and would enable any stakeholder to make the case that an IE is or is not necessary.

ICNU recommends that “RFPs that do not allow utility ownership should presumptively be conducted without an IE, unless the utility can make a clear showing that customers would receive a significant benefit from an IE’s participation.”<sup>6</sup> Should the Commission decide to adopt ICNU’s recommendation and make IEs are presumptively unnecessary for RFPs without utility ownership options, we recommend that the final rules explicitly allow for not only utilities but also non-utility stakeholders to make the case that customers would benefit from IE participation in a particular RFP.

## ***3. Third-Party Due Diligence Review of Utility Ownership Bids***

We continue to find merit in the concept of third-party due diligence review of RFP bids. This concept, in various forms, has been discussed extensively throughout the informal phase of this rulemaking.

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<sup>6</sup> ICNU Opening Comments at 4.

### III. CONCLUSION

We again thank the Commission for this opportunity to comment and look forward to discussing these issues further with the Commission, Commission Staff, and interested stakeholders.

Respectfully submitted this 26<sup>th</sup> day of February, 2018.

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